IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9901 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANLAL NARANLAL MEHTA

Versus

CHIEF SECRETARY

Appearance:
MR PM VYAS for Petitioner No. 1
MS HANSA PUNANI, ld.AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/09/2001

ORAL JUDGEMENT

The petitioner, who claims to be a Freedom Fighter, has filed this petition claiming Freedom Fighters Pension. It is the case of the petitioner that he has participated in the Independence movement and therefore, he left the school on 13.6.1941 and joined the National movement in the year 1942 against the Britishers. The petitioner, with the help of his friends, started Vyayamshala in Khadia and he used to inspire youngsters to the movement against the Britishers. It is further stated that he himself used to distribute circulars and pamphlets against the

Britishers. It is averred in the petition that because of his anti national activities against the Britishers, the police were in search of the petitioner and therefore, he went to Secunderabad and joined the Military service in the year 1943. The petitioner used to write letters to the Congress House, Bhadra, Ahmedabad. However, the Police officer recovered one of the letters of the petitioner. Under the circumstances, the petitioner escaped with a view to save himself from the arrest and left Secunderabad to Bombay for three years where he worked for the purpose of maintaining himself and his family. The petitioner has stated that even though he has been recognised by the State Government as a Freedom Fighter and has been honoured on many occasions, when he applied for getting the Pension, the same has been denied by the respondents on absolutely untenable grounds. The petitioner has challenged the order dated 19.2.2000 passed by the District Collector, Ahmedabad, i.e. respondent no.3 herein informing the petitioner that his request to get Pension is rejected by the State Government.

2. Heard Mr.P.M.Vyas, learned Counsel for the petitioner and Ms.Hansa Punani, ld.AGP appearing for the respondents. I have also gone through the averments made in the petition as well as the Annexures and the reply affidavit filed on behalf of the respondents.

3. In order to substantiate the averments made in the petition, the petitioner has produced certain documents wherein the address of the petitioner has been shown as, 2140, Panditjini Pole, opp. Audichya Wadi, Sarangpur, Ahmedabad-1. From the School Leaving Certificate produced by the petitioner, the birth date of the petitioner is shown as 20th July 1925. It is further stated in the said certificate that the petitioner has cleared VIIth Standard in the year 1940-41. The petitioner has averred in the petition that the petitioner with the help of his young friends, started Vyayamshala at Khadia to inspire them to join the Freedom movement. The petitioner has given the names of his colleagues as, Shri Brahmakumar Bhatt, Shri Jayanti Dalal etc. The petitioner has produced certificate of Shri Brahmakumar Bhatt at Annexure.B dated 2.4.1996 confirming that the petitioner who was staying at Panditjini Pole, Khadia, Ahmedabad was attending Sarangpur Vyayam Shala and was taking interest in 1942 Quit India Movement. It is also stated that Shri Harin Pathak, Member of Parliament had also given certificate to him which is produced at Annexure.D stating that the petitioner (Freedom Fighter) is known to him since 20 years.

Similarly, Shri Harin Pandya, Member of Legislative Assembly, Gujarat, by his letter dated 28th Sept.1998 addressed to the Collector, Ahmedabad had also informed that the petitioner is known to him since five years and it is also known to him that the petitioner has actively participated in the Freedom Movement. The said letter is at Annexure.I to the petition. When the petitioner applied for getting Freedom Fighters Pension benefits, he was informed by the District Collector, Ahmedabad vide letter dated 18.7.1998 at Annexure.H to the petition that the petitioner is required to produce the certificates from the MPs and/or MLAs together with other evidence of his participation in the Freedom Movement. The petitioner accordingly made an application for getting the necessary documents vide his application dated 7.11.1998 to the respondent no.3 as stated above, which has been rejected without assigning any reason. Hence, the present petition.

3. An affidavit-in-reply has been filed by Shri J.B.Vaghela, Under Secretary, General Administration Department Sachivalaya, Gandhinagar. Para 3 of the said reply is relevant for our purpose, which is reproduced as under:

> "3. I say and submit that the petitioner has made an application for freedom fighters pension to the Collector, Ahmedabad dated Nil in November 1998. The petitioner along with his said application produced a brief note dated 7.11.98 about his underground activities during "Quit India Movement". The petitioner mentioned in the said note dated 7.11.98 that in 1939 & 1943, he had joined Military on fictitious name of "Bapalal". The statement that the petitioner joined army in 1939 (i.e. at the age of 14 years) is not acceptable, since his date of birth is 20.7.25. No documentary evidences acceptable under the scheme in support of his claim for pension based on underground activities in freedom movement have been produced by the petitioner. Therefore the Collector, Ahmedabad has not recommended the case of the petitioner for granting pension under the scheme. The State Government has considered the demand of the petitioner after taking into account the opinion of the Collector, Ahmedabad and District Committee. However as the petitioner has not produced any direct or alternative acceptable evidences in support of his claim for underground activities, the State Government has rejected

petitioner's request for granting Freedom Fighters pension in January, 2000."

From reading the above averments, it is clear that the petitioner joined the Military services on a fictitious name, "Bapalal". However, the respondent has rejected the claim of the petitioner mainly on the ground that the petitioner joined the Army in 1939, i.e. at the age of 14 years which is not acceptable since his date of birth is 20th July 1925. Annexure.F is the service particulars of the petitioners given by Army Ordnance Corps Records Office, Secunderabad. Perusing the original copy of said service particulars of the petitioner, it is clear that the petitioner joined the Army in the rank of "Sepoy" having Army No.29311 with the fictitious name, "Bapalal". His date of enrolment is 26.2.1943 and was discharged on 14.11.1945. The cause of discharge is mentioned as "Deserter" in the service particulars. Counting the date of birth, i.e. 20th July 1925, the petitioner joined the Army in the year 1943 at the age of 18 years. Therefore, the averment of the respondents that the petitioner joined the Army at the age of 14 years is not correct. True that the respondents considered the date of joining of the petitioner in the Army on the basis of the statement submitted by the petitioner, but the record reveals that the petitioner in fact joined the Army in the year 1943. Nothing is stated in the affidavit-in-reply about the document Annexure.F which is about the service particulars of the petitioner. The claim of the petitioner for Freedom Fighters Pension is rejected on the ground that the petitioner has not produced the documentary evidence acceptable under the Scheme in support of his claim for Pension based on the underground activities in Freedom Movement. In my opinion, even that ground is also unsustainable in view of the fact that the petitioner has produced the certificate of Shri Brahmakumar Bhatt vide Annexure.A to the petition giving details about the activity carried on by the petitioner in the company of Shri Brahmakumar Bhatt. Thus, the grounds stated in the affidavit-in-reply are not acceptable. It is indeed a sorry state of affairs that the petitioner is denied his right to claim Freedom Fighters Pension by the State authorities especially when the State Government itself recognised the petitioner as a Freedom Fighter. Besides the certificates given by the MP and MLA, the petitioner was honoured as Freedom Fighter by All India Sardar Patel Foundation on 31.10.1999 as can be seen from Annexure.G2 to the petition. The petitioner was also invited as a Freedom

Fighter by the Protocol Department of the General Administration Department, Gandhinagar as can be seen from Annexure.G. Considering the entire facts and circumstances of the case, I am clearly of the opinion that the petitioner has made out a case of Freedom Fighter and therefore, he is entitled to get the Pension under the "Swa Vivek Nidhi".

4. In the result, this petition is allowed. I set aside the order dated 19.2.2000 passed by respondent No.3. The respondents are directed to pay the Freedom Fighters Pension to the petitioner with effect from 18.6.1996, i.e. the date of the application and shall continue to pay the same in accordance with the scheme. The respondents are directed to carry out these directions within eight weeks from the date of receipt of the writ. Rule is made absolute with costs.

11th Sept.2001 (K.R. Vyas, J.)
Sreeram.